

ABERDEEN AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
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: Docket No. IBIA 93-107-A
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: March 15, 1994

This is an appeal from a May 28, 1993, decision of the Aberdeen Area Director, Bureau of Indian Affairs, rejecting an application for technical assistance under the Indian Financing Act. For the reasons discussed below, the Board affirms the Area Director's decision.

On April 16, 1993, appellant submitted an application which stated: "The undersigned anticipates obtaining financing from the Bureau of Indian Affairs under the provisions of the Indian Financing Act of 1974, and hereby requests management and/or technical assistance." Appellant stated that it was seeking a technical assistance grant in the amount of \$63,771.10 for work done on the Pine Ridge Community well, apparently for Sure Tideway of America, Inc., a garment factory.

The Area Director rejected appellant's application on May 28, 1993, stating:

The purpose for which the funds would be used does not meet the eligible scope as defined by regulations. Management and Technical Assistance funds are intended to be used to purchase assistance from professional sources to provide advice and consultation in areas such as business assessment, the establishment of accounting systems, market evaluations, etc. The construction or purchase of assets for an enterprise is not an eligible purpose.

Appellant's notice of appeal from this decision states:

The Oglala Sioux Tribe feels that they have been misled as verbal approval was given from [Assistant] Secretary Ed Brown on this issue. In addition, the rationale for the disapproval of the request, "The purpose for which the funds would be used does not meet the eligible scope as defined by regulations," is unacceptable to the Tribe.

Although advised of its right to file a brief, appellant did not do so. Appellant has therefore given no further details concerning the former Assistant Secretary's involvement in this matter.

Had the Assistant Secretary rendered a decision in writing, neither the Area Director nor this Board would have any authority to reverse it. 25 CFR 2.6(c). However, verbal statements are not "decisions" under 25 CFR Part 2. See 25 CFR 2.7(a), requiring that decisions be written. Accordingly, the Board finds that the Area Director was not precluded from issuing a decision in this case. The Board also finds that it has jurisdiction here, because it has authority to review the Area Director's decision.

Section 501 of the Indian Financing Act, 25 U.S.C. § 1541 (1988), provides:

Concurrent with the making or guaranteeing of any loan under subchapters I and II of this chapter and with the making of a grant under subchapter IV of this chapter, the purpose of which is to fund the development of an economic enterprise, the Secretary shall insure that the loan or grant applicant shall be provided competent management and technical assistance consistent with the nature of the enterprise being funded.

BIA has promulgated regulations implementing this provision for the three programs it administers under the Act. With respect to the loan program, 25 CFR 101.7 provides:

Prior to and concurrent with the approval of a United States direct loan to finance an economic enterprise, the Commissioner [of Indian Affairs] will assure * * * that competent management and technical assistance is available to the loan applicant for preparation of the application and/or administration of funds loaned consistent with the nature of the enterprise proposed to be or in fact funded by the loan. Assistance may be provided by available Bureau of Indian Affairs staff, the tribe or other sources which the Commissioner considers competent to provide needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional cost.

Similar provisions appear in the regulations governing the loan guaranty and Indian business development grant programs. 25 CFR 103.4 and 286.11.

It is clear that construction of a well is not an activity for which management and/or technical assistance may be furnished under these provisions. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's May 28, 1993, decision is affirmed. 1/

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

1/ This decision does not preclude appellant from seeking funds under other BIA financial assistance programs which might cover this project.